# Supreme Court of the United States

October Term, 1974

No. 74-8

J. B. O'CONNOR, M.D.,
*Petitioner,*

v.

KENNETH DONALDSON,
*Respondent.*

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

## BRIEF OF STATE OF OHIO AMICUS CURIAE

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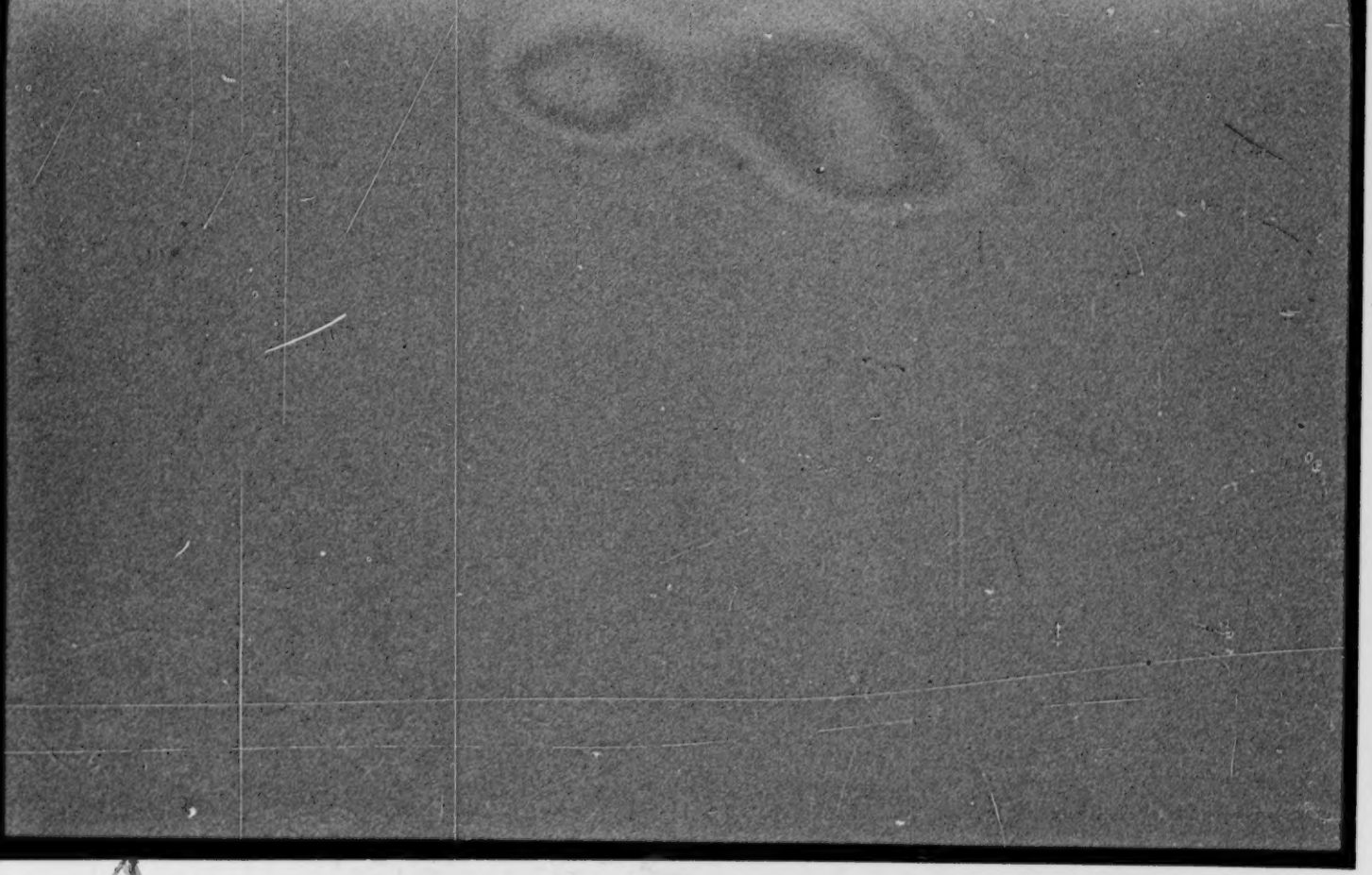

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## INTEREST OF STATE OF OHIO

The State of Ohio has a direct and immediate interest in the recognition of a constitutional right to treatment. Confined in 28 Ohio facilities for the mentally ill and mentally retarded are approximately 18,350 persons, approximately one-half of whom were committed and currently remain hospitalized involuntarily. The State believes that each involuntarily committed patient has "a constitutional right to receive such individual treatment as will give each of them a realistic opportunity to be cured or to improve his or her mental condition." *Wyatt v. Stickney*, 325 F. Supp. 781, 784 (M.D. Ala. 1971).

Ohio demonstrated its firm commitment to mental health care when it admitted the existence of such a right in its Answer filed in a suit involving persons committed to a state facility for the criminally insane.[1] Any decision concerning the constitutional right to treatment will affect the citizens of Ohio and the state officials responsible for delivering mental health services to the people.

Thus, the State of Ohio, acting by and through the Attorney General of the State, respectfully submits this brief as *amicus curiae* pursuant to Rule 42, of the Revised Rules of the Supreme Court of the United States, requesting a denial of the petition for writ of certiorari on the "right to treatment" issue.[2]

## OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 493 F.2d 507.

## QUESTION PRESENTED

Whether a person involuntarily civilly committed to a state mental hospital has a constitutional right to receive such individual treatment as will give him a reasonable opportunity to be cured or to improve his mental condition.

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[1] *Davis, et al. v. Watkins, et al.*, CA No. 73-205 (N.D. Ohio). This case, a class action filed against state officials alleged, *inter alia*, a constitutional right to treatment for patients involuntarily committed for the purpose of treatment. On September 9, 1974, United States District Judge Nicholas Walinski recognized the constitutional right to treatment and defined the parameters of such a right. The order is comprehensive and will have significant ramifications for the treatment of all persons confined in Ohio mental health facilities; to now have the Supreme Court of the United States grant certiorari in this case and later hold that such a right does not exist would adversely affect the State's action to correct mental health conditions.

[2] We do not address the two additional issues raised by petitioner.

## STATEMENT OF CASE

The State of Ohio adopts the summary of the facts of record as found in the unanimous opinion of the court below, 493 F.2d 507 at 510-515.

## SUMMARY OF ARGUMENT

To confine a person involuntarily because of a mental disability for the purpose of providing treatment and to fail to provide such treatment is cruel and unusual punishment in contravention of the Eighth Amendment's cruel and unusual proscription and the Fourteenth Amendment's due process and equal protection clauses. The State of Ohio believes that if laws committing persons to state institutions are enacted by state legislatures for benevolent purposes, certain constitutional rights flow from such statutes. Laws confining persons involuntarily for the purpose of treatment can only be justified if treatment is provided. A state legislature's duty to its citizenry does not end upon passage of a statute requiring treatment for patients; a further duty arises to ensure that such treatment is provided. Substantial constitutional issues are raised if the state undertakes the benevolent purpose of providing treatment and subsequently fails to provide it.

## ARGUMENT

There are two significant cases decided by this Court which shed substantial light upon the existence of a constitutional right to treatment. In *Robinson v. California*, 370 U.S. 660 (1962), a California statute imposing a ninety-day prison sentence on narcotics addicts was struck down as contrary to the proscriptions of the Eighth Amendment. The Court held that a person would not be punished for an illness, a condition or a "status" from which he

could not voluntarily extricate himself. Finding addiction to be an illness, the Court suggested that a statute making the condition or "status" of mental illness a criminal offense punishable by imprisonment without treatment would meet the same determination of unconstitutionality. This principle applies with equal force to a person afflicted with mental illness, for to recognize the malady and fail to provide the necessary opportunity for treatment when that is the purpose of confinement "violates the very fundamentals of due process." *Wyatt v. Stickney*, 325 F. Supp. 781 at 785 (M.D. Ala. 1971).

In *Jackson v. Indiana*, 406 U.S. 715 (1972), this Court examined the case of a criminal defendant indefinitely committed solely on account of his incompetency to stand trial and found that "due process requires that the nature and duration of commitment bear some reasonable relation to the purpose for which the individual is committed." It is just such a mandate which the State of Ohio is following in recognizing that the *quid pro quo* for "therapeutic" involuntary confinement is treatment.

Other federal courts have evolved standards of care and constitutional safeguards for persons confined in various state institutions and are persuasive in sustaining a right to treatment for involuntarily committed persons. In *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966), the Court of Appeals for the District of Columbia upheld a right to treatment on statutory grounds but *in dicta* emphasized that the absence of treatment might raise the specter of possible constitutional violations.

Three district courts have enunciated a right to treatment for civilly committed mentally ill and mentally retarded persons. In *Wyatt v. Stickney*, 325 F. Supp. 781 (M.D. Ala. 1971), *on submission of proposed standards*, 334 F. Supp. 1341, *enforced*, 344 F. Supp. 373, 387, *appeal*

*docketed sub nom, Wyatt v. Aderholt,* No. 72-2634 (5th Cir. 1972), the court set forth minimum constitutional standards for adequate treatment of the mentally ill and the mentally retarded, detailing the requirements for a humane psychological and physical environment. *See Stachulak v. Coughlin,* 364 F. Supp. 686 (N.D. Ill. 1973), right to treatment for the mentally ill; and *Welsch v. Likins,* 373 F. Supp. 487 (D. Minn. 1974), right to treatment for the mentally retarded.

Other institutions have come under similar scrutiny. With respect to training schools for juveniles, courts have applied the theory that commitment without treatment becomes punishment for "status" in violation of the Eighth Amendment. *See Nelson v. Heyne,* 491 F.2d 352 (7th Cir. 1974), a medium security institution for juveniles, approximately one-third of whom were non-criminal offenders; *Martarella v. Kelley,* 349 F. Supp. 575 (S.D.N.Y. 1972) juveniles classified as "Persons in Need of Supervision" (PINS); *Morales v. Turman,* 364 F. Supp. 166 (E.D. Texas 1973), where the Court found a constitutional right to treatment for juveniles adjudicated delinquent and involuntarily committed. *See also Millard v. Cameron,* 373 F.2d 468 (D.C. Cir. 1966); *Miller v. Overholser,* 206 F.2d 415 (D.C. Cir. 1953); and *United States ex. rel. Schuster v. Herold,* 410 F.2d 1071 (2d Cir. 1969) *cert. denied,* 396 U.S. 847 (1969).

## CONCLUSION

Because the weight of judicial authority supports the United States Court of Appeals for the Fifth Circuit's decision on the right to treatment issue, the petition for writ of certiorari should be denied.

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